



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** 50 State Security Service, Inc.

**File:** B-245237; B-245238

**Date:** November 12, 1991

---

Richard J. Webber, Esq., and John J. O'Brien, Esq., Arent Fox Kintner Plotkin & Kahn, for the protester.  
Robert C. Mackichan, Jr., Esq., and Barry D. Segal, Esq., General Services Administration, for the agency.  
Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

1. Protest challenging the two lower bidders' compliance with the certificate of independent price determination clause, filed in our Office more than 10 months after protest was filed with the contracting agency, is dismissed as untimely where the protester failed to diligently pursue its agency-level protest.

2. Third low bidder is not an interested party to challenge cancellation of invitation for bids where its objection to the eligibility of the low bidder for award is untimely and thus it would not be in line for award if its protest was sustained.

---

### DECISION

50 State Security Service, Inc. protests the General Services Administration's (GSA) cancellation of invitation for bids (IFB) No. GS-04P-90-EWC-0102, to provide guard services for the U.S. Attorney's office in Miami, Florida and the procurement of the same services under IFB No. GS-04P-91-RYC-0012.

We dismiss the protests.

The IFB was issued on August 17, 1990, and bids were opened on September 20. On September 27, 50 State filed a protest with the agency alleging that the apparent low bidder, Vanguard Security, Inc., and the apparent second low bidder, Forestville Corporation d/b/a Fieck Security, were owned by the same person. The protester contended that this common

ownership violated a certification of independent price determination in each of these two bids that required every bidding company to be independent. 50 State, as the apparent third low bidder, asserted in its protest that it was entitled to the award.

On October 2, GSA notified bidders of the pending protest and advised the protester that the procurement was "put on hold for an indeterminable period of time." The agency awarded an interim contract to 50 State on a monthly basis for the period of December 1, 1990, to December 1, 1991. On November 2, 1990, bidders were asked to extend their bids for an additional period of 120 days; when this extension period ended the following March, they were asked to extend again. When the second extension period ended on May 31, 1991, bids were permitted to expire. On March 27, 1991, the Department of Labor issued a revised wage rate determination that was applicable to this procurement. The agency states that "subsequent to the issuance of this determination, a decision was made to cancel the solicitation and to reprocure the required services." This decision was not formalized, however, until the agency issued a statement of findings and determination on September 16, 1991.

On August 5, 1991, GSA issued a pre-solicitation notice to notify potential bidders of the next solicitation for these services. The protester received the notice on August 6, contacted the agency concerning its protest on August 13, and upon discovering that GSA had closed its file, submitted this protest to our Office on August 15.

The protester argues that the agency canceled the solicitation when it deliberately allowed the bids to expire in May, and that the de facto cancellation was improper because it was not supported by a compelling reason, as required by the Federal Acquisition Regulation (FAR). It argues that award should be made under the original IFB and that there is no need to recompute the services. The protester also reasserts its contention that the apparent low bidders were ineligible for award.

First, we find untimely 50 State's protest of the eligibility of the apparent low bidder. When a protest has been filed with the contracting agency, the protester is not permitted to delay filing a subsequent protest with our Office until it eventually receives a final decision on the merits from the agency. East West Research Inc., B-236515, Nov. 30, 1989, 89-2 CPD ¶ 510. The protester may wait only a reasonable length of time for an agency's response before filing the protest here. We have held that when a protest is filed with an agency and more than 3 months elapses without any response, a subsequent protest to our Office is untimely because the protester did not diligently pursue the

protest. See El Paso Builders, Inc.--Recon., B-241509.2, Nov. 19, 1990, 90-2 CPD ¶ 409. In this case, 50 State waited from October 1990, when GSA acknowledged its protest, until the following August to inquire about the status of its protest, a delay of more than 10 months. According to the record, the only communication between the protester and the agency during this time concerned the extensions of the protester's bid. While the protester complains about the agency's delay in responding to the protest, we point out that it is the protester's affirmative obligation to diligently pursue its protest. Id. We therefore find that the protester's failure to pursue its agency-level protest has rendered untimely the protest that the two low bidders are ineligible for award.<sup>1</sup>

Second, we dismiss the protester's challenge to the decision to cancel the IFB. To be eligible to pursue a protest, a party must be "interested" within the meaning of our Bid Protest Regulations, 4 C.F.R. §§ 21.0(a) and 21.1(a) (1991). An interested party is generally defined as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by failure to award a contract. 4 C.F.R. § 21.0(a). Where a protester would not be in line for an award even if we were to resolve the protest in its favor, the firm generally lacks standing as an interested party. Corrugated Inner-Pak Corp., B-233710.2, Mar. 29, 1989, 89-1 CPD ¶ 326. Here, as we concluded above, the protest against the eligibility of the

---

<sup>1</sup>The agency's position is that the two low bidders are eligible for award. The agency reports that the individual identified by 50 State as having a controlling interest in the two firms has a controlling interest in only one of the companies. Also, the agency points out that the fact that the two bidders have common officers or ownership does not violate the certification of independent pricing absent evidence that the bidders colluded among themselves to set prices or to restrict competition by inducing others not to bid. ProTimex Corp., B-204821, Mar. 16, 1982, 82-1 CPD ¶ 247. GSA points out that other than the bare allegation in its agency-level protest that the certification was violated, the protester has not alleged nor provided evidence of collusion in bidding or any attempt to restrict competition under the IFB.

low bidder is untimely. Since the protester thus would not be in line for award even if we were to sustain its protest, it is not an interested party to challenge the cancellation. Id.

The protests are dismissed.

*Michael Golden*  
Michael Golden  
Assistant General Counsel